IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2217 OF 2006

Skypak Services Specialities Ltd. ..Petitioner.
Vs.
Bharatiya Kamgar Karmachari Mahasangh ..Respondent.
...
Mr. C.U. Singh fi/b M/s. Sanjay Udeshi & Co. or the Petitioner.
Mr. R.S. Pai for the Respondent.
....

CORAM: DR. D.Y. CHANDRACHUD, J.

23rd August, 2006.

P.C. :

1. This Petition is directed against an interim order of the Industrial Court dated 31st July, 2006. The interim relief that has been granted by the Industrial Court inter alia restrains the Petitioner herein from selling or disposing of the properties described in paragraph 3(A) of the application until the complaint is decided on merits. It is only that part of the order that has been challenged in these proceedings. The direction that has been issued by the Industrial Court restraining the Petitioner from terminating the services of the workmen without following due process of law and to pay the arrears of the workmen as agreed in the settlement dated 4th March, 2006 has not been challenged.

Similarly, the learned counsel has also stated that the direction in regard to the deposit of arrears of ESIC dues, dues towards Provident Fund and the dues of Suyog Sahakari Patpedhi Limited is not questioned.

2. It is common ground that a settlement has been entered into between the management and the union on 4th March, 2006 as a result of which the conditions of service have been revised. The Petitioner is, however, in arrears in respect of the payment of the dues of the workmen under the settlement. In paragraph 13(d) of the Petition, it has been admitted that the arrears under the settlement amounted to Rs.7,29,975; that the arrears on account of ESIC and Provident Fund contributions were in the amount of Rs.21,26,491/-. The total arrears amounted to Rs.30,40,241/- which according to the Petitioner has now been reduced to Rs.26,28,324/-. Obviously this figure is not the final figure in regard to arrears which would vary from month to month as the installments under the settlement become due and payable. The Industrial Court has also noted in the course of its order that though certain deductions have been made from the salaries of the workmen towards the payment of the employees' contribution for

Provident Fund, the corresponding payments have not been deposited before the Provident Fund authorities. However, on behalf of the Petitioner, the attention of the Court has been drawn to the fact that the Petitioner was ready and willing to furnish an undertaking to the Industrial Court, to the effect that if it were to be permitted to deal with the open land and building forming part of the immovable assets, the sale proceeds thereof would be utilized for the payment of the dues of the workmen and the Provident Fund authorities and that the services of the workmen would not be terminated without following due process of law.

3. At the hearing of this Petition, counsel appearing for the Petitioner submitted that if the order of injunction continues to hold the field, it would be impossible for the management to meet the liabilities of the workmen, having regard to the fact that there was a carried forward loss of Rs.115.92 lacs as on 31st March, 2006. Counsel appearing for the Respondent union stated that there is no objection as such to permitting the sale of the properties, but there should be an effective assurance before the Court that the sale proceeds shall be first utilized to meet the outstanding arrears under the settlement and the payments which are liable to be made

to the Provident Fund and ESIC authorities. In view of this submission that has been urged on behalf of the union, counsel appearing for the Petitioner has stated before the Court that the Petitioner will undertake to deposit before the Industrial Court an amount of Rs.50 lacs out of the sale proceeds that are initially received in the first instance in order to enable the disbursal of the amount that is due under the settlement to the workmen. Counsel appearing for the management also stated that the management undertakes forthwith thereafter to also disburse the outstanding dues of the Provident Fund and ESIC authorities.

4. Accordingly since there has been a broad consensus on the aforesaid lines, the Petition is disposed of with the following directions :

i) On the Petitioners filing an undertaking before this Court within a period of one week from today of their managing director in the terms indicated hereinafter, the interim injunction granted by the Industrial Court on 31st July, 2006 restraining the Petitioners from disposing of the properties mentioned in paragraph 3(A) of the application shall stand vacated;

ii) The undertaking to be filed by the managing director of the Petitioners shall provide that immediately upon the sale of any of the aforesaid properties, the Petitioners shall at the first instance out of the sale proceeds, deposit an amount of Rs.50 lacs before the Industrial Court so as to ensure the disbursal of the outstanding dues to the workmen under the settlement dated 4th March, 2006 as well as the disbursement of other dues including the dues of the Provident Fund and ESIC authorities as well as the dues of the LIC and the credit society. Together with the deposit of Rs.50 lacs the Petitioners shall file a statement before the Industrial Court of the outstanding dues on all accounts so as to enable the Industrial Court to issue necessary directions in the matter of disbursal. This will be subject to due verification by the Industrial Court and in the event that the union has any objection as to the computation of the dues, it would be open to the Industrial Court to pass necessary directions, to ensure that all disbursements are complete. If there is any surplus left thereafter, that shall be refunded back to the Petitioners by the Industrial Court. The interim injunction that has been granted by the order of the Industrial Court dated 21st July, 2006 restraining the Petitioners from disposing of their properties

shall accordingly stand substituted in terms of the aforesaid directions.

The Petition is accordingly disposed of.